19 53.

File No. 0/ Agreement
G-2/5

Legal Department
G **BRANCH**

K

Subject:— PHE.

1. Opinion on Agreements

File No. 0/ Agreement / 53

Gen. 194 e.

G-2/5

C O N T E N T S.

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Office of the R.L.A.

The Civil Supppiées Department has referred these papers to this office for R.L.A.'s consideration -

(1) whether the Collector's action in recalculating distance between balsar and Dharampur from 21 mil e to 19½ and attempting a settlement of the transport bills for the past period from April 1949 to Cctobur 1950 on this basis is difensible under the terms of the contract; and

(2) whether the recovery of excess amount of Rs. 4,258-10-3 is justified and whether it can be made by attachment of the contractor's dues from Government in respect of the work done by him under the contract for Balsar Taluka.

From the Mamlatdar, Dharampur's letter dated the 19th April 1949 it appears that the contractor statred the work of transporting Government foodgraine from Dharampur to Balsar on the 14th April 1949. There are two agreements executed by the contractor, one for the period from the 14th April 1949 to the 13th Cctober 1949 and the other, from the 1st Octobar 1949 to the 31st December 1949. The conditions of the both the agreements are generally indentical. Under clause 3 of the agreements, the contractor was to transport Government foodgrains at the rate of Re.0-7-6 per ton per mile. From this clause it is clear that the contractor was to be entitled to charges at the specified rate forthe actual distance in mileage between Dharampur and Balsar. The maxium distance between Dharampur and Balsar as certified by the Deputy Engineer, public Works Department, Balsar is 19-4 miles. Therefore, in absence of any 'tab e of distances' prepared by the

prepared by the Collector, Surat under clause 12 of the agreements the excess payment of Rs. 4,258-10-3 made to the contractor due to difference of 1-4 miles indistance between Dharampur and Balsar would be an over payment through mistake of fact and would be recoverable by Government under the agreements. Recalculation of the distance by the Collector between Balsar and Dharam ur does not amount to alteration, variationor revision of any terms of the agreements. Therefore consent of the contractor was not necessary under clause 21. All sums due to Government from the contractor are recoverable by it under the agreements as arrears of land revenue by virtue of clause 24 of the agreements. Under section 150(c) read with section 154 of the Bombay Land Revenue Code, arrears of land revenue can be recovered by distraint and sale of the defaulter's moveable property. The contractor's dues from Government in respect of the work done by him under the contract for 1951 being moveable property belonging to him, can therefore be validly attached by the Collector, Surat for recovering the amount of Rs. 4,258-10-3.

o/c Sd/- P.M.L.
29-1
Remembrancer of Legal Affairs.

U.M. to C.S.D.No. C-67, dated the 29th January 1953.

C.C.R./13-8 /

Office of the R.L.A.

The Civil Supplies Department is informed that there is no objection to the disposal of the remaining bales of hay after making a panchnama of the same.

In the notice of suit given by Shri Jamnadas's pleader, he has made three claims, viz. -

(i) Rs.7,151-0-10 for unpaid price of grass

(ii) Rs. 11,500-0-0 as damages due to loss of grass and baling press by fire.

(iii) Rs. 500-0-0 Return of deposit.

As regards the first claim, clause 1(d)(iv) of the agreement provides that the weight recorded by the Divisional Forest Officer or any other authorised officer will be final and binding. In this case heavy shortages were detected by the Mamlatdar of Ankleshwar in respect of consignments sent from Asangaon and on inquiries it was found that the spring balance was quite correct but the method of weighment was defective. A bale which really weighed 70 lbs. was incorrectly weighed as 125 lbs. The contractor's representative also agrreed that the method of weighment was defective In view of this Government were considering taking act on against the Depot Officer, Asangaon in whose time these heavy shrotages were detected and subsequently his services were dispensed with. It is true that the weight recorded by him would be binding according to the terms of the agreement but if Government can lead evidence to prove the defective weighing, court might take that factor into consideration.

As regards the second claim clause (e) is quit clear on the point that it was the responsibility of the contractor to protect grass against fire

fire till it was loaded inthe wagon as and when wagons were made available. The contractor is therefore not entitled to damages due to loss by fire on the ground that arrangement for wagons was not made by Government in time.

As regards the deposit of Rs. 500/-, it was taken as security for the due performance and observance by the contractor of the conditions of the agreement. It does not appear from these papers that this deposit is to be forfeited for non-observance of any condition. The Divisional Forest Officer East Than has stated that Rs.661-4-0 are to be recovered from the contractor for the baling wire supplied to him. Clause (1)(d)(iii) provides that each bale shall be well-tied with strong baling wire. There appears no mention in the contract regarding supply by Government of baling wire. The deposit cannot therefore be set off against the cost of baling wire.

The contractor has stated in the notice that Rs. 151-0-10 are remaining unpaid. The Civil Supplies Department has stated that deductions for shortages amount to Rs. 5,431-3-0 only and bills amonting to Rs. 1,716-12-0 are pending in view of non-reciept of consignee's reports. From whatever amount is payable to the contractor Rs. 661-4-0 for baling wire may be deducted and the rest and the deposit of Rs. 500/- will have to be paid to the contractor. The suit would be defensible in respect of remaining claims subject to evidence being available to prove defective weighing at the station of despatch.

o/ a Sd/- p.M.L.
20/2
Remembrancer of Legal Affairs.

U.R. to C.S.D., No. G-123, dated the 20th February 1953.

C.G.R./13-8 /

Office of the R.L.A.

There is no agreement, express or implied between Government and Shri V.D.Mote for the purchase of his stock of Kadbi; nor did Government issue any order authorizing the Hay-Inspectors either to place an order with Shri Mote or to purchase from him Kadbi. If the Inspectors had placed any order with Shri Mote or given him to understand that Government would purchase his stock of Kadbi, Government would not be liable for the breach of such agreement as the action of the Hay-Inspectors in that respect would be deemed to be unauthorized. However, it appears that Shri Mote did bring 20 wagonloads of Kadbi to the rail-dead for being despatched to Cambay and the Hay Inspectors wold have taken delivery of that stock if Shri Mote had by that time obtained the export permit from the District Magistrate. It is, therefore, clear that Shri Mote brought his stock to the rail-head on the explicit understanding that the Hay-Inspectors would take delivery thereof. Since Shri Mote has thereby incurred expenses for the despatch of the stock to the rail-head, it appears that it would be equitable that Government should pay him compensation equal to his out-of-pocket expenses for bringing that stock to the rail-head.

o/c Sd/- P.M.L.
19-2-

Remembrancer of Legal Affairs.

U.R. to C.S.D.No. G- 120 , dated the 20th February, 1953.

C.G.R./13-B /

Office of the R.I.A.

Regarding

Regarding paragraph 1.- The word 'miler' has been defined in clause 2(b) of the Bombay Grouninut Oilcakes (Procurement) Ofder, 1953, to mean a person who produces groundnut oilcake. If a miller has not produced groundnut oilcake duting a particular week, he would stillbe a miller as it is his business to produce groundnut oilcake. However to put the matter beyond doubt, it would be advisable to amend the definition suitably to make the intention more clear. When any miller ceases altogethr to produce groundnut oilcakes and switched over to crushing oilseeds other than groundnut oilcakes, then such a person would not come within the definition of 'miller' in the siad order and consequently he would not be bound to submit any return as required by clause 4. The former order dated 15th February 1952, applies to all persons incharge of oil mills. The delegation Notification No. S.R.O. 1741, dated 20th October 1952, is in respect of oilcakes and not in respect of groundnut oilcakes only. The order can be suitably amended to achieve the object inview.

Regarding paragraph 2.- A person who produces groundnut oilcake is a miller and it is immaterial whether he produces it for himself or on account of any body else such as is customs s. However, under clause 4 he is required to furnish a statement of the stocks/x reserved by him for delivering to Government as required under clause 3 and of the stocks delivered by him to Government. The oil miller who has no stock of his own for reservation and delivery to Government is not a legally bound bound to submit a return. At the most he may be

~~may be required to send~~

may be required to send a 'nil' return. But in view of these complications, it seems advisable to amend the order suitably as under clause 3 what he can reserve for Government is the production made by him on his own account and it would be wrong to make him deliver to Government oilcake which does not belong to him.

o/o Sd/- P.M.L.

25/2

Remembrancer of Legal Affairs.

C.G.R. to A.& F.D.No. G-132 dated the 26th February 1953.

C.G.R./13-8 /

Office of the R.L.A.

The claimof the Anand Milk Products Ltd. for overhead charges in r s ect of supplies restricted beyond the permissible limit of 15 percent was considered by the R.L.A. in paragraph 5 of his opinion No. G-678, dated the 8th December 1952 and as stated therein there is some substance in the contention of the company and Government may give some relief in this respect to the company. Under clause 11 of the agreement, Government has agreed that the quantity ~~to~~ restricted at any time shall not exceed 15 percent of the contracted quantity. If Government has restricted the quantity to more than 15 percent Government wi l have to pay by way of damages the loss caused to the company for breach of this part of the clause. The Milk Commissioner's office has informed the company that instructions were given them on 2nd November 1950 and 15th November 1950 that only 150 maunds would be required daily for despatching to Bombay and they should not have therefore pasturised the milk beyond that limit. The company's claim for processing charges is therefore not admissible. But the company will have to be paid some comensati n for the overhead charges which they have to i cur as they could not have reduced these charges immediately on Government's demanding less supplies. This compensation would be for breac of the second part of clause 11. That part of clause does not provide expressly for the measure of damages which the company is entitled to claimin case of its breach. It is true that in clause 14 (para.2) it is stated that Government could not be liable by way of cost or procession

charges for milk not acceptable to Government or for any purchase of raw milk made contrary to any specific instructions issued to the company by Government from time to time. But in this case the instruction to supply quantity less than 15 percent was in contravention of the provisions of clause 11 and clause 14 will not apply.

o/c Sd/- 29/4

Remembrancer of Legal Affairs.

U.R. to S.M.C., No.G-252, dated the 29th April 1953.

C,G.R./13-8 /

Office of the R.I.A.

It is doubtful whether Messrs. F.R. and Sons would give an undertakng in the proposed terms for they may call upon the Food Controller to point out the specific irregularities in respect of which such claims would be made. If, however, they amicably agree to give such an undertaking, they would be bound to abide by it.

Further, it would not be open to Government to kkxx hold back the deposit indefinitely as under clause 9 of the agreement the contractors are entitled to be paid the deposit or such part thereof as shall not be appropriated towards the satisfaction of any claim under the agreement upon due compliance by the contractors of all their obligations. Thus, after deducting the amount of Rs. 2,999-1-10 the remainder will have to be refunded. Even if such refund is made after refusal by Messrs. F.R. and Sons to give the proposed undertaking and future claims are detected then they can be recovered as arrears of land revenue under clause 11 of the said agreement.

p/c Sd/-

1/5

Remembrancer of Legal Affairs.

U.R. to F,C .No. 3-257, dated the 2nd May 1953.

C.G.R./13-8 /

Office of the R.L. A.

Two claims are considered in this case, one amounting to Rs. 11568-12-0 put forth by the Amreli Jilla Madhyasth Shakari Bank Ltd., (formerly named as Amreli Agricultural Bank Ltd.) and the other by the Kodinar Banking Union of about Rs. 4000/-. Both these claims arise out of the handling of wheat by the institutions in the merged Barada State in the year 1948-49. The Secretary, Finance Department to whom these papers were referred has raised the question whether there are any grounds at all for paying any compensation to these two banks.

2. The claim put forth by the Amreli Jilla Madhyastha Sahakari Bank Ltd. arises in the following circumstances. At a meeting of the Amrili Prant Civil Supply Committee it was decided that on account of the irregular rains in the Prant and with a view to minimising the difficulties of agriculturists inobtaining seed grains forthe next year quantities of Bajra, Jowar, Paddy and Wheat should be purchased. The Mahal Officers and Mahal Samittees were asked to ar age for the purchase of qunantities equivalent to 50% of the seed requirements through Co-operative Societies, Banks or Pedhis. A sum of Rs 2 lakhs was required forthese purchases but as it would have taken time to obtain sanction of Government, the co-operative societies and banks were requested to carry on with the purchases with their own money at their own risk, responsibility for profit or loss being borne by the institutions concerned. Subsequent the Samittees protested against the direction that purchases should be effected at their own risk on which the Baroda Government passed orders that the work of purchase of requirements of seeds should

should be taken over by the Government themselves. No orders in regard to the point raised by the Samittees were passed. In the meanwhile this bank had purchased 6400 maunds of wheat @ Rs 10-7-3 per maund. A part of it was sold by the Bank to the Gaikwad Baroda State Railway. On 5th May 1949 the Bank passed a resolution requesting the Suba to take over the remaining stock but the stock could not be taken over by the Government till December 1949. It was so taken over on payment of Rs 9/- per maund. The Bank has accordingly put forth a claim on account of difference in the price paid by it and the rate allowed by the Government, plus the rent of the godowns and interest. On a representation made by the Bank in 1950 Governme t saw no reason to compensate the Bank for the loss. Government however agreed to pay to the Bank commission @4 as. per maund on the entire quantity handled by it . The contention of the Bank is that it was appointed as an agent by the Baroda Government to effect the purchases of the requirements of seed.

3. The relationship of principal and agent may be constituted -

(a) by express a pointment by the principal or by a person duly authori sed by the principal to make such appointment;

(b) by implication of law from the cnduct or situation f the parties, or from the necessity of the case; or

(c) by subsequent ratification by the principal of acts done on his behalf.

Where a person assumes to act on behalf of another the assent of the person on whose behalf the act is done will not be implied from his mere silence or acquiescence unless the situation of the parties is

is such as to raise up a presumption that the act is done by his authority. (see Bowstead on Agency, 10th Edn. page 11). Applying these principles to the facts of the present case it is admitted that there was no express appointment of the Amreli Jilla Bank as the agent of the Baroda Government for pruchasing wheat for seed purposes. It is alleged by the Bank that its appointment as agent could be inferred by implication. In this respect it appears necessary to refer to Suba, Amreli's order dated the 17th February 1949. It appears from this order that the Mahal Committees had to arrange to store seed-grains of various kinds and it was estimated that wheat to the extent of 20,000 maunds would be required for the purpose. It was intended that Government should advance the money to Co-operative Societies, Banks, ect., for the purchase of grains required for seeds, but the sanction of Government could not be obtained without loss of time, and consequently, the Samittee requested the Banks to go on with the purchase work with their own money and the Mahal Officers were requested to arrange to send particulars every fort-night about different types of grains, their quantities, ect., purchased by the Co-operative Societies and Banks. It was expressly stated that the seed purchasing and storage work should be made by the Institutions concerned at their own risk, i.e. the respeonsib lity of loss or profit will be the concern of the institutions. After receipt of the directions of the Subha of Amreli to purchase at the prevalent market rates foodgains for seed purposes to the extent of 50% above the requirements as determined by the Vahiwatdars and the Mahal Committee, at the risk of the institutions concerned, the Bank immediately wrote

wrote on 26th February 1949 objecting to the direc-
ton that 'the Bank should purchase at its own ~~x~~ risk'
and requested that the selling rate should be so fixed
that no loss would be suffered by the Bank in
the transaction. After having objected to the
direction of the Samittee that the Bank should purchase
at its own risk there was absolutely no reason for
the Bank to go on purchasing wheat if it did not desire
to purchase at its ~~xx~~ own risk, Nor was there any
reason to made a request to Government for fixing
the selling rate at such a figure that no loss
would be suffred by the Bank in the transaction. These
circumstances are incomsistent with the con ention of
of the Bank that it made purchases as an agent of the
Baroda Government. Further, when the Bank was required
to purchase wheat for seed purposes it could not do
business in the commodity for any other purpose. How-
ever, it is stated that out of the quantity purchased
by the Bank, it sold 220 ~~x x~~ maunds to Gaikwad Baroda
State Railway at a ~~rx~~ profit. If the Bank were really
the agent of the Government, it could not enter into
this transaction without any express authority from
that Government, It is urged that when the Bank
requested Government to fix the selling rate at such
a figure as not to cause any loss to it, the Baroda
Government passed an order dated 21st March 1949 to the
effect that "the work was being taken over by Govern-
ment" whereby it impliedly agreed to the relationship
of principal and agent. This inference is clearly
unwarranted. It was for the Government to fix the
selling rate of wheat, and the desire on the part of the
Baroda Government to take over the stock from the
Bank could not give rise to an inference that the
stock held by the Bank was on behalf of the Borada
Government. ~~x~~ Considering all these circumstances,

circumstances, and particularly, the express terms that the Bank should make purchases at its own risk, it would be impossible to infer that the Bank was impliedly authorised to made purchases on behalf of the Baroda Government. Even assuming that there was an agency and the Baroda Government was bound to reimburse the loss suffered by the Amreli Bank, after the merger of the Baroda State the Bombay Government would not be bound by this contractual liability unless the Bombay Government has by express or implied terms agreed to do so. It is true that when the Amreli Jilla Bank represented its case to Government, Government decided to pay the Bank a commission at the rate of 4 as. per Kachha maund on the entire quantity handled by it including the stocks handed over to Government and this commission would cover all expenses and interest charges. It is difficult to understand why summoned arrived at this decision; but it does not contain any admission on the part of Government that the Amreli Jilla Bank was an agent authorized to purchase wheat for seed purposes, and the payment of as. 4 per kachha maund was, it appears, merely an ex-gratia payment. In these circumstances, Government should not admit the claim of the Amreli Jilla Bank for reimbursement of the loss suffered by it.

4. The claim put forth by the Kodinar Banking Union arises in the following circumstances. Under the orders of the Taluka Samitee dated 1st February 1949 four wagon loads of wheat were imported by the Mamlatdar, ~~Mamlatdar~~ Kodinar, from Damnagar and the same were handed over to the Union for sale and distribution. The Union disposed of 550 maunds out of this. On 1st July 1949 on account of merger the stocks of foodgrains in the custody of co-operative societies, etc. were

were taken over by Government. The Union had a stock of 350 x maunds of wheat f r whichit was paid at the rate of Rs 14/- per maund. The Union represents that the actual cost paid by it at Rs 26-12-0 came to Rs 9352-8-0; and has thus claimed the difference amounting to Rs 4462-8-0. It seems that the said wheat was purchased at Damnagar at Rs 24/- per maund. Adding to this the commission paid to the Damnagar Society, the freight and the commission of as. 8 per maund and deducting the excess profits made by the Union in other transactions, the Financial Adviser proposes to pay to the Union a sum of Rs 3542/-.

5. The case of the Kodinar Banking Union does not appear to be similar to that of the Amreli Bank as stated by the Finance Department at page 51 ante. The Union was entrusted with the distribution and sale of wheat in the Taluka from the consignment of 4 wagons. The Financial Adviser has satisfied himself that the cost of the wheat which Government took over from the Union comes to Rs 25-12-6 per maund. This claim may therefore be conceded.

o/c Sd/-

22/5

Remembrancer of Legal Affairs.

U.R. to F.D., No. G- 301, dated the 23rd May 1953.

C.C.R./14-S /

Legal Department.

The questions for R.L.A's consideration are :-

(1) Whether the tender of Messrs. Sulemanji Haji Company which has been accepted by Government can be treated as a valid one; and

(2) if it is invalid, whether it would be competent for Government to rescind the orders already passed.

Question No. (1)- In condition 2 of the Tender-notice it was clearly stated that with the tender for every bir the amount that will have to be deposited was Rs. 1,000/- and that if the tender is for more than one bir, Rs 1,000/- will have to be deposited for each such bir. Messrs. Sulemanji Company gave tender for two birs and paid only a deposit for Rs 1,000/-. However against bir No.1 he has shown the deposit of Rs 1,000/- and put only ditto-marks against bir No.2. His tender for bir No.1 has been accepted and it would not be now possible to rescind the acceptance on the ground that the whole tender being in one form Rs 2,000 /- ought to have been deposited. Government could have availed of this argument before acceptance but having once accepted the deposit against bir No.1 although it was only bid having rejected the offer for bir No. 2 even though it was highest on the ground that no deposit was paid against it, it would not be now open to Government to declare the tender as invalid and rescind the agreement.

In view of this, question No. 2 does not arise.

c/c 3d/-
Secretary to Government.

U.R. to A.& F.D., No. G- 433, dated the 23rd July 1953.

C.C. R/ 14-8 /

Office of the R.L.A.

Under clause 14 of the agreement entered into by Shri Pandurang Sakharam Patil with Government he had deposited a sum of Rs. 1,000/- with Government which deposit he had agreed should be forfeited upon his failure to comply with the conditions of the agreement. Clause 15 specifies the extent to which and the manner in which the deposit could be forfeited. That clause also provides that the Miller shall forfeit the whole amount of the deposit if he failed to observe any of the terms and conditions of the agreement (other than the condition regarding supply of fixed number of bags of rice per month)) or committed a breach of any of the provisions of any orde orders issued under the Essential Supplies (Temporary Powers) Act, 1946, relating to the purchase, sale, milling and disposal of paddy and rice. A perusal of the report of the Police Sub-Inspector dated the 23rd March 1950 in the case papers would show that in addition to the breach of clause 4 of the agreement the Miller had also committed breaches of the provisions of several control ordres (vide also the report of the Mamlatdar of Vasai dated the 10th March 1949). There appear therefore sufficient circumstances to justify the forfeiture of the deposit. But the actual order of forfeiture passed by the Director of Grain Purchase of the 6th December 1951 in this case appears to be defective. As stated by the applicant it was passed at his back, no opportunity being given to him to explain his case. The order does not also mention the circumstances which led to the di Director of Grain Purchase to order the forfeiture. It merely states that because Government had decided to forfeit the amount, the forfeiture has been ordered. The order of forfeiture is, therefore, likely to be assailed as arbitrary.

In the circumstances, the best course would be to communicate to the petitioner, in reply to the petition now made by him, the circumstances leading to the forfeiture, and on receipt of his say in the matter (which he should be asked to do) to pass a fresh order of forfeiture.

o/c Sd/-

29-5

Remembrancer of Legal Affairs.

U.R. to C.S.D., No. G- 319 dated the 29th May 1953.

C.G.R./14-8 /

Legal Department.

In the particulars which were supplied to tenderers for supplying of plastic milk cards, it was stated that the entire order should be completed within two months of the placing of the order. In the quotation sent by Messrs. J.J. Engineering Company on 14th January 1953 in response to the tender notice issued by the Milk Commissioner on the 6th January 1953, no mention was made about the time of delivery whichmeans that they had agreed to complete the entire order within two months of the placingof the order. On 7th February 1953, Messrs. J.J. Engineering Company were informed by the Milk Commissioner that their offer to supply 4,00,000 cards at Rs 72 per one thousand had been accepted and it was made clear to them that as required in the tender notice the order must be completed within two months. As the order was placed on 7th February 1953, it should have been completed by 7th April 1953. However on 18th February 1953, Messrs. J.J. Engineering Company wrote to the Milk Commissioner referring to the interview they had with him and stated that the black foil will have to be imported and about two months would be required for its delivery but the importers do not give any guarantee about this delivery period and under the circumstances they cannot give delivery of the printed cards within two months as required and that delivery can be given two months after the receipt of the black foil. In his reply to this letter the Milk Commissioner has stated that he was prepared to accept the assurance given by their Shri Patel that they would do their best and get the black foil as early as possible and commence delivery soon thereafter. It was also added at the end of this letter that the letter was in final

final confirmationof the acceptnce of all their terms in the hope that they would do their best and supply right tyre of cards at the earliest possible date. Thereafter Messrs. J.J.Engineering Company wrote back on 26th February 1953 to the Milk Commissioner that they have noted that as regards delivery he has agreed to the period stated by them viz., two months after receipt of black printing foil. However an assurance was given that they would deliver as early as possible.

From all this correspondence it is clear that initially time was the essence of the contract and Milk Commissioner had invited tenders only from those who could complete delivery with two months from the placing of the order. Later onhowever the Milk Commissioner had agreed to the variation ofthe terms on the point of delivery. Although the Milk Commissioner made it clearthat the company should do their best to get black foil as early as possible and commence delivery soon thereafter, the Milk Commissioner also told them that all their terms were accepted and nothing was said by the Milk Commissioner when the Company wrote back by saying that they have noted that the Milk Commissioner when the Company wrote back by saying that they have noted that the Milk Commissioner has agreed todelivery with two months of receipt of black foils. However an assurance was given that they would do their best to secure black tin foil as early as possible, the firm cannot delay execution of the order indefinitely. Although the firm xx will not be liable for breach of contract inview of the fct that the Milk Commissioner had agreed to the condition that delivery to be given after receipt of black foil, the Milk Commissioner can terminate the contract after giving a notice to them that the cards

cards are required for the Milk Distribution Scheme and the Milk Commissioner cannot indefinitely wait for the receipt of the black foil by them and that if delivery is not completed by a specified date, the contract would stand terminated. "When a contract is silent as to the time of performance of merely says it is to be performed "with all x dispatch" the law implies an engagement that it shall be executed within a reasonable time looking at all the circumstance of the case." (P. 194 Chitty on contracts 20th Edn.).

o/c Sd/-

Secretary to Government.

U.R to M.C., No. G- 518, dated the 28th August 1953 .

C.G.R./14-8 /

Local Department.

It appears that the Milk Commissioner invited quotations for the supply of 200 mild steel stillages from four firms and the National Steel Equipment Co. offered to supply 200 mild steel stillges on the following among other conditions:-

(1) In view of the increased prices of raw materials and labour, our revised price for 200 stillages of similar design and specifications will be Rs 57/- each ex-works, Bombay. Sales tax will be extra.

(2) You will have to arrange for release of the necessary materials."

The Milk Commissioner byhis letter dated the 13th July 1951 accepted the offer of Messrs. National Steel Equipment Company for the supply of 200 stillages at a reduced rate of Rs 56-8-0 and the National Steel Equipment Company by their letter dated the 20th July 1951 agreed to the acceptance of their offer and to the delivery ex-works in about four weeks from the date of receipt of raw materials. On the request of the Company, the Milk Commissioner arranged with the Rationing Officer, Iron and Steel, for a permit for the release of the raw materials. The Company on the basis of this permit took delivery of some materials required for this work and wrote to the Milk Commissioner on 31st August 1951 as follows:

" With reference to permit No. Bom/III-51/1502 dated 22-8-1951 for 6.25 tons of M.S. Angles against which we have taken delivery of the materials, please note that the Bombay Controlled Registered Stock-holders Association have informed us that they will collect Sales Tax at the rate of half anna in the rupee and this will be charged to us as the permit is not in our name. In that case we shall have to charge you the extra amount of Sales Tax payable to them.

" However, inorder that you may not have to pay Sales

Sales Tax, we suggest you to approach the Provincial Iron and Steel & Rationing Officer, Bombay, and request him to kindly give a note to the Bombay Controlled Registered Stock-holders Association, amending the permit in our name instead of yours." Accordingly the permit was amended in the name of the National Steel Equipment Company and the necessary raw materials were later purchased by them without payment of any sales tax and the Company thus fulfilled the contract by supplying finished articles. The Company is now claiming the sales tax from the Milk Commissioner in respect of ~~Rs~~ 8.25 tons of the material purchased by them before the permit was got amended in their name. The question now raised for the R.L.A.'s consideration is whether this claim of Rs. 92-10-0 on account of sales tax is valid.

According to the terms of the contract as could be inferred from the foresaid letters exchanged between the Government here and the Company, it would be apparent that Government agreed to get the raw materials released and the question of payment of the sales tax on these raw materials was not raised by the Company at any stage. Government in fulfilment of these terms got a permit for the release of the raw materials. It is true that the Milk Commissioner did not deny his liability to pay the sales tax in reply to the letter of the Company to pay the sales tax in reply to the letter of the Company dated 31st Agusut 1951, but on a closer scrutiny of that letter it appears that the Company informed the Milk Commissioner about the liability of Government to pay the sales tax in case the permit was not amended in their favour. It is nowhere stated in that letter that the Company would claim the sales tax which would be recovered from them on the 6.25 tons of M.S.Angles purchased on the basis of the

the permit. As stated above, under the terms of the contract, Government is not liable to pay the sales tax on the purchase of the raw materials. All that Government agreed to was to get the raw materials released in favour of the Company. The release of the raw materials would certainly be a subject to the liability of the Company to pay all the incidental charges, including the sales tax and others. Even assuming that there was default on the part of the Milk Commissioner to definitely protest against the implied liability of Government as indicated in the Company's letter dated 31-8-1951, that would not create any liability against Government. In the circumstances, it appears that Government would not be liable to pay the sales tax claimed by the Kolhapur Company

o/c Sd/-

Additional Secretary to Government.

U.R. to Milk Commissioner No. 19787/A, dated the 30th September 1953.

C G.R./14-8 /

Office of the R.E.A.

In their letter to the Secretary, Legal Department, dated the 16th October 1951, Messrs. Little and Company has stated very clearly that a floating contract was been brought into existence between the Government and the Vishvabharati Insurance Company. This contract is to be spelt from correspondence only. In pursuance of this contract, the Insurance Company insured the consignments transported in country crafts by the Messrs. Bombay Steam Navigation Company the Government transport agents for the season 1946-47. Although there was a general contract of insurance as regards the rates of premia, each voyage policy would give rise to a separate cause of action in respect of the amount due and payable in respect of each policy by the Insurance Company. Thus the claims would not be successive claims arising under the same obligation so as to bar a subsequent suit under order II Rule 2. However, with a view to avoid any technicical contention, it would be advisable to pool up all the losses which are to be claimed from the Insurance Company and then claim them in one suit.

o /c Sd/- P.M.L.
9/11
Remembrancer of Legal Affairs.

U.R. to F.C.,No. 1481/C -Confl., dated the 19th November 1953.

C.G.R./14-8 /

Office of the R.L.A.

No regular contract was entered into by the Milk Commissioner with the Bombay Suburban Cattle Owners Co-operative Dairy Society Ltd., Andheri and the contract cannot even be spelt from correspondence. No confirmation letter or reply appears to have been written to the Society by the Milk Commissioner during the period of supply in answer to its letter dated the 28th June 1952 and the supply of three maunds or three maunds, ten seers was accepted from the beginning i.e. from 1st July 1952. The letter dated the 26th August 1952 from the Milk Commissioner accepting the offer made in the Society's letter dated the 28th June 1952 was issued after the period of supply in respect of which the penalty was imposed, was over. The penalty clause was therefore not binding on the Society when the short supply was made and cannot therefore be enforced against the Society. The Society has written to this effect to the Milk Accounts Officer on 4th May 1953 and has requested for payment of the Rs 1,414-5-0 deducted from their mail bills. ~~An additional~~ A suit for recovery of the amount of Rs 735-12-0 will not successfully lie.

Further, as the supply of three maunds or three maunds, ~~when~~ ten seers was accepted by the Milk Commissioner's office without any protest in spite of the offer of the Society to supply ten maunds every day and as the acceptance letter was issued by the Milk Commissioner's office after the supply was stopped, the Society would be entitled to the amount of Rs 1,414-5-0 without any deduction on account penalty.

o/o d/-P.M.I.
Remembrancer of Legal Affairs.

U.R. to M.C., No.G- 675 dated the 30th October '53.

C.G.R./14-8 /

Office of the R.L.A.

The only question for R.L.A's consideration is whether according to the terms of the contract, Government can withhold payment of the amounts due to the firm as sanctioned already by the Milk Commissioner pending final decision.

According to the M.C.'s office note there were agreements with the contractor for construction of the following ~~xx~~ works -

1) Central Dairy Building;
2) Office Building, Boiler and Engineer House, Dormitory etc.;
3) Pump House and Gate Storage Tank.

It is stated that except for changes regarding cost etc. the form of the agreement is the same in all cases. The amounts that are paid to the contractor are mentioned in column 5 of the statement at page 45 ante. The balance due is shown in column 6 of that statement and it amounts to Rs 43779-8-0. The M.C.'s Office has stated that the difference between the total cost as shown in the statement and that incorporated in the agreements is due to the cost of Extra items carried out on the works by the contractor; Audit has raised objection to the rates of these extra items sanctioned by the Milk Commissioner and the Architects and have suggested that they should be got scrutinized ~~x~~ by the Milk Commissioner in consultation with the Architects, the contractor and the Special Engineer and thereafter sanctioned by the Milk Commissioner. But final payments are held up because of the Audit objection. Regarding cement the contractors have objected to the rates charged and the Special Engineer is working up the difference between Rs 110/- per ton as charged to the contractor and the actual cost and the Government have purposed to refund the difference.

~~X~~ Milk Commissioner

is also taking action regarding refund of fines which were levied without a certificate from the architects. The measurements are also being rechecked. The final payments are withheld on account of these things.

Clause 29 of the agreement provides that the contractor shall be entitled under the certificates to be issued by the Architect to the contractor and within 30 days of the date of each certificate to the payment by Government from time to time by instalments. When in the opinion of the Architect work to the value of Rs 70,000/-(or less at the reasonable discretion of the Architect) has been executed in accordance with this contract, at the rate of ninety per centum of the value of the work so executed in the buildings until the balance in hand amounts to the sum of Rs 30,922/- after which time the instalments shall be up to the full value of the work subsequently so executed and fixed in the building. The contractor shall be entitled under the certificate to be issued by the Architect to receive payment of Rs 30,922/- when the works are completely ready for occupation. Till then the amount will be held up by the Employer as a security deposit. The initial deposit of Rs15,000/- (fifteen thousand rupees) will be refunded at the expiration of six months from the date of completion or as soon after the expiration of such period of twelve months as the works shall have been finally completed and all defects made good according to the true intent and meaning hereof, which-ever shall last happen. Should any decorative work of painting and papering have been deferred on the instructions of the Architect under clause 22, payment for such decorative work or painting and papering shall be made as to..... per cent. on completion and as to the balance

at the expiration of .... months from that date. Provided always that the issue by the Architect of any Certificate during the progress of the works or at or after their completion shall not have effect as a Certificate of satisfaction or relieve the Contractor from his liability under clause 15 and 16 and within the extent and period provided by the Statue of Limitations.

Clause 29(A) provides that the contractor will submit his bills in the prescribed forms through the Architects, after a test check of measurements of work done by the Sub-Divisional Officer in charge of Supervision. The bills will be scrutinised by the Architect and forwarded by the Architect together with the necessary certificates, to the Accountant General, Bombay for payment to the contractor direct.

From the statement at page 45 it appears that out of the approximate total cost of ₹17,12,857 the contractor has been paid ₹16,690,77-8-0 and only a balance of ₹43,779-8-0 now remains to be paid. As against this the contractor has claimed only a balance of ₹39,949-14-0 in the letter of his solicitors at page 17 ante. In addition to this contractor has claimed ₹48,917-5-0 and ₹2380 as excess paid in respect of cement and cement bags and ₹16085 in respect of penalty alleged to have been wrongfully levied. Under clause 29A of the agreement the payments are to be made by the Accountant General. As the audit has objected to certain payments, Accountant General will not sanction the bills unless audit objections enumerated at page 37 are satisfied. The Solicitors have made a demand of interest at 9% on the amounts due to the contractor. In view of the provisions of clause 29 of the agreement the contractor was to be paid 90% of the value of the works executed until

the balance in hand amounted to ₹38,922 and thereafter he should have been paid full value on complet on of the subsequent works and ₹35,952 are to be paid when the works are com lete and ready for occupation. The Milk Commic ioner's of ice note shows that the works were completed and are occupied since more than 3 years. The contractor is, therefore, entitled to the full pa ment and his bills cannot be withheld.

In view of this the Milk Commissioner's of ice should expedite rech·ckin f measurements, payment of the balance in respect of extr items and settleing of the questions of refund of fine and refund in respect of excess for cement charged. All this should be d one as expeditiously as possible as there has be'n too much delay and the court would be inclined to grant interest holding that the period taken to settle accounts is undUly long.

o/c Sd/-P.M.L.

Remembrancer of the Le al Affairs.

U.R. to M.C's Office ₹ No.G- 747 dated the 5th December 1953.

C.G.R./14-8 /

Office of the R.L.A.

Two questions have been raised for the Remembrancer of Legal Affair's consideration in this case. They are

1) whether freight is payable at the rate prevailing on the date of booking the cargo or on the date of loading the cargo;

2) whether payment at the rate of ₹34-8-0 in this case amounts to acceptance of the above freight rate and will be binding on Government even though according to legal position or trade practice the actual freight payable for the shipping Co. is the rate prevailing on the date of loading the cargo.

As regards the 1st question it appears that "the rate at which the freight is to be paid is generally stated in the bill of lading or charter-party. If it is not stated but the contract shows that freight is to be paid, it must be calculated at the ordinary rate ruling at the time when the shipment was made (p.801 of Carver's Carriage by Sea -11th edition). In the bill of lading in this case the column relating to freight there is only an endorsement as follows :-

"As arranged payable in Bombay."

The Company has contended that the freight rates were quoted to Shri Raman, F.A. on a telephonic enquiry he made while the booking was being negotiated. As regard this contention the Civil Supplies Department has written to the company that the Financial Adviser remembers that a rate of ₹31-0-0 was quoted on the telephone but he felt that the rate was higher and suggested reconsideration. However, as the cargo was loaded without insisting on any change in the rate of freight, that rate will be considered as the agreed rate. The shipping cannot therefore, be said to have been made without the rate being fixed and therefore, the practice that when no rate is fixed,

freight should be calculated at the ordinary rate ruling at the time when the shipment was made will not apply. It seems that the revised rate of R25/- per ton notified in the Coastal Conference Freight Circular was to come into force from th September 1952. Besides the Director General of Shipping, has stated in his letter dated 20th February 1953 that the ordinary practice of the Coastal Conferen is to apply the rate in force on the dates the consignments are booked. The Indian Coastal Conference also stated that this question was discussed in the Rates Sub-Committee of the Conference and they have decided that the rate of R34-8- will be applicable to the carrying of the particular consignment. In his letter at page 5 ante the Assistant Secretary of the Indian Coastal Conference has stated that the practice generally followed is to charge freight current as on the date of shipment but this principal is not absolute and freight as current on date of booking is also permitted to be charged looking to the circumstances of the case. In view of this, Government would not be entitled to the difference between the two rates in respect of the consignment booked on 8th September 1952.

o/c 38/- P.M.L

11/12

Remembrancerof Legal Affairs.

U.R, to C.S,D., 762, dated the 11th December 1953.

C.G.R./14-8-/

In this case no formal agreement in the form prescribed in Article 290 seems to have been executed. But it can be contended that the agreement is contained in the Correspondence. The offer made by the firm was signed by the District Magistrate by way of acceptance. (Please see page 19 of the papers). The Collector and District Magistrate is a person duly authorised to to execute contracts on behalf of the State. There was therefore a valid agreement by correspondence in this case. That agreement has also been acted upon by both sides. In this connection see A.I.R. 1938 Bombay 16.

As regards damage to the bales by white ants attention is drawn to clauses 6 and 7 of the undertaking which provide that the purchaser shall not refuse to Lift any bales on the ground that the contents appears to have been damaged, provided that the bales were in well packed condition. They were in that condition at the time of delivery. Clause 7 provides that Government will not be responsible for any damage of any kind in the cloth bales lifted by the firm.

In view of these circumstances the firm will be liable to Government for damages for breach of contract by refusing to take delivery of the remaining bales; but Government appears to have already forfeited the deposit and if Government wants to seek damages over and above the amount of the deposit Government will have to give credit for the same and claim the balance (see Manian V. Madras Rly 29 Mad 118).

Clause 10 of the undertaking provides that in case of a dispute, the decision of the District Magistrate shall be final and binding on both the parties. Before filing a suit the District Magistrate may decide the dispute and make an award and the suit would be only for enforcing the recovery. If Messrs. Manekbai and Brothers contend that the contract itself is not binding then it is not a dispute arising out

P.T.O.

arising out of the contract and they will have to go to a court for deciding this question.

o/c Sd/- P,M.I.

21-12

Remembrancer of Legal Affairs.

U.R, to S.T.C.,No. G- 786, dated the 22nd December 1953.

C.G,R./16-8

Office of the R.L.A.

The auction sale was subject to the terms and conditions set out in the sale-memo at page 1 ante. These terms and conditons are silent on the question of a deposit, its forfeiture or imposing a penalty. The statement at page 3 shows that Rs. 70,000/- were paid by Messrs. A.H. Shivandiwala and Company, the auction purchasers as an advance payment to be adjusted against the delivery of the stock. It is stated that one of the terms of the sale was "delivery should be completed within 30 days." This condition does not appear in the Sale memo at page 1 ante. Presumably it may be in notice of auction sale. Time was tobe considered as an essence of contract. Failure to take delivery by the stipulated time could have been treated by Government as breach and Government would have been entitled to damages. But as extension was given form time to time, Government are not entitled to recover any damages from Messrs. Shivandiwala except the out-of-pocket expenses such as godown rent, insurance and interest charges which Messrs. Shivandiwa a have undertaken to pay (p. 17 ante). The answer to the 1st question is therefore in the negative and to the 2nd question is in the affirmative.

o/c Sd/- P.M.L.

3/12

Remembrancer of Legal Affairs.

U.R. to F A.L Addl. Secy., C.S.D., No. G- 809, dated the 31st December 1953.

C.C.R./16-S /

Office of the R.L.A.

The following questions are referred to the R.L.A. for advice :-

(a) Whether the acceptance of the full liability by the Insurance Officer, F.D. may stop the Director of Grain Purchase or the Government in making a claim against the C.C. Contractor on account of his negligence, or whether the above acceptance will substantially weaken Government case with regard to the recovery from the Country Craft contractor on account of his negligence.

(b) Whether the material as is available in this file is sufficient to establish negligence on the part of the Country Craft Contractor or his Agent the tindel in not salvaging sunk bags immediately.

(c) If the answer to (b) is 'yes' then the basis on which this loss can be assessed.

1) Clause 7 of the agreement entered in to with Messrs. Alwarsee Trading Co. by Government provides that the Co. shall have to acquaint itself thoroughly with the terms and conditions of the Insurance. This means that the Company was aware of the Labour and sue clause in Insurance policy. This clause inter alia provides that in the case of any loss or misfortune, it shall be lawful for the insured or the agents to sue, labour, travel for in and about, the defence, safeguard and recovery of the said goods and merchandise or any part thereof, without prejudice to this Insurance. This clause in the policy does not impose a duty on the Insured or their agents to take measures as may be necessary, for the purpose of averting or minimising the loss. In his BOOk - Law of Insurance in British India - Barwell has made it clear at p. 163 that the English Code imposes such a duty but there is no corresponding rule of law in India. In view of this, it does not appear that the view taken by the Insurance Officer at 'D' of his note dated 19-6-53, is correct. But cl. 3 of the agreement provides that where loss is not due to stress of weather but to negligence of the tindel

the Co. shall be liable to make good the loss to Government. Under Cl. 14 of the agreement the Co is liable for delivery at the destination the actual no. of bags despatched and the Co. is bound to make good to Govt. all losses caused by shortages and wilful damage or damage caused by negligence. The Co. was therefore bound to minimise the loss and if the loss is caused by negligence of the Co., it can be recovered from the Co. The Co. cannot escape liability only because the loss is recovered from the Insurers. Under the doctrine of subrogation the insurers are entitled to claim all amounts which the insured recovers in respect of the loss. (Please see the letter of the Insurance Officer to the Insurance Co. at p. 135).

2) As regards the question whether there is enough material in these files to establish negligence of the Co, or its agent the tindel in not slavaging the cargo immediately, it appears that the negligence that is alleged is not delay in the efforts to unload the cargo but the delay in recovering the sunken bags. The craft sank at 2 A.M. on 15-12-51, and the recovery started on 17th Dec. 1951. The contractor has not given any explanation for this delay in his letter at p. 127. In his report at p. 67 the Range Officer has remarked that the contractor could have easily saved maximum amount of ~~xxgx~~ cargo without waiting for formalities and that in case of such accidents the first and foremost thing is nothing but prompt action by securing maximum divers. Before, therefore, taking action under cl. 22 by reimbursing Government for losses to the extent of Rs. 1000/- from the deposit, the Co. should be asked to explain about the delay in starting the ~~xix~~ salvage oprations.

3Y For assessment of such loss there are no fixed basis but as the loss was minimized to the extent of Rs 1200 by starting salvage operations after 2. days, a loss of Rs 100/- would be considered as reasonable as in all 770 bags were sunk out of which 368 were salvaged.

o/c Sd/-P M.L.

14/12

Remembrancer of Legal Affairs.

C.R. to C.S. No. C,-772

dated the 15th December 1953.

C.G.R./16-8